Supreme Court, U.S.
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No. 86-1228

In The
Supreme Court of the United States
October Term, 1986

CELSO MORALES,

Petitioner

v.

MACK TRUCKS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT, MACK TRUCKS, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT M. GOLDICH
Three Parkway—20th Floor
Philadelphia, PA 19102
(215) 563-0650

Attorney for Respondent, Mack Trucks, Inc.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

STATEMENT OF THE QUESTION PRESENTED

Did the District Court, as affirmed by the Court of Appeals, correctly apply Rule 56 of the Federal Rules of Civil Procedure in granting summary judgment for Respondent where Petitioner failed to present any evidence that Respondent's reason for not rehiring Petitioner as an employee was either a pretext for discrimination or a violation of any contractual obligation?

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STATEMENT OF THE CASE

Petitioner has accurately stated the procedural history of the case. However, Petitioner's lengthy rendition of the facts obscures the simple and undisputed facts which resulted in the entry of summary judgment by the District Court.

Petitioner worked for Respondent Mack Trucks, Inc.[1] (hereinafter "Mack") between May 1, 1978 and November 9, 1979. He was employed in a collective bargaining unit represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (hereinafter "the United Auto Workers"). On November 9, 1979, Petitioner was laid off due to a lack of work. Under the terms of the collective bargaining agreement between Mack and the United Auto Workers, he retained recall rights for a period of two years. On November 9, 1981, having not been recalled, Petitioner was notified by Mack of the termination of his seniority rights.

In January 1984, business conditions improved and Mack had a substantial need for new hires. After all laid-off employees with seniority rights were recalled, Mack decided on its own and without any agreement with the United Auto Workers to screen the employment records of approximately 200 former employees with expired recall rights and to offer new employment to those with satisfactory disciplinary and attendance records.

Under the criteria unilaterally adopted by Mack, offers for rehire were made to all former employees except those

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[1] Pursuant to Rule 28.1, Mack notes that Renault Holdings S.A. owns approximately 42% of the stock in Mack.

with disciplinary infractions on record and those employees with records that showed ten or more attendance infractions (either absences or latenesses) in the year prior to layoff.

Applying these standards, 159 out of the 194 white employees whose files were reviewed (81%) were offered re-employment. Six out of the eight Hispanic employees (75%) whose files were reviewed were offered re-employment. Petitioner was not.

Petitioner's attendance record showed that he had 21 attendance violations in the last year of his employment, well over the disqualifying standard. The majority of these infractions were latenesses which only could register on the computerized system when the employee punched in after the required starting time by using his private employee badge.

No white employee with ten or more attendance ininfractions was rehired by Mack. No minority employee with less than 10 infractions was refused an offer. Many employees, including Petitioner, requested that Mack review their records after the initial rejection. In the case of Petitioner as well as similarly situated white employees, if the review of the record showed ten or more infractions, re-employment was denied without exception.

After the pool of employees with expired recall rights was exhausted, Mack contracted with an independent nonprofit corporation, the Private Industry Council of Lehigh Valley, Inc. ("PIC") to recruit new employees. PIC followed strict instructions from Mack to give preferential consideration to Hispanic and other minorities in the hiring

process. The ultimate result of the rehiring process was a substantial increase in the number of Hispanics and other minorities employed by Mack.

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ARGUMENT

A. This Case Does Not Present Any Important Question of Law Justifying Review by This Court.

This is an individual case of alleged employment discrimination. It was decided on the basis that the plaintiff (Petitioner here), in response to a motion for summary judgment establishing that more than 200 employees were judged for rehire on the basis of uniform standards, failed to set forth any facts to support the inference that the standards were employed as a pretext for discrimination.

Accordingly, the District Court properly applied Rule 56 of the Federal Rules of Civil Procedure in entering judgment for Mack. This case does not present any issue justifying review by this Court.

B. The District Court Followed Established Precedent in Determining that There Was No Evidence to Support Petitioner's Claim that Mack's Refusal to Rehire Him Based on His Employment Record was Pretextual.

The District Court correctly applied the framework established by this Court in *Texas Department of Community Affairs v. Burdine,* 450 U.S. 248 (1981), in considering the evidence in this case.

Under *Burdine,* once Mack, in support of its summary judgment motion, established that Petitioner was rejected

for rehire on the basis of neutral nondiscriminatory job standards, any presumption of discrimination created by Petitioner's proof of a prima facie case was eliminated. The burden then rested upon Petitioner to establish that he had been the victim of intentional discrimination. 450 U.S. at 255.

Since proof of pretext was an essential element of Petitioner's proof at trial, it was incumbent upon him to make a showing of pretext in response to Mack's motion for summary judgment. *Celotex Corp. v. Catrett*, 106 S. Ct. 2548 (1986). Petitioner did not meet this burden.

Petitioner attempted to show that Mack's decision in 1984 denying him rehire was a pretext by attacking the accuracy of the underlying attendance records created in 1979. He did not show that Mack deviated from the consistent application of its employment criteria in reviewing the records of the entire pool of 200 employees in 1984. He did not show that the use of the criteria employed by Mack in 1984 had a disparate impact on Hispanics.[2] He did not show that Mack had any knowledge in 1984 of the alleged inaccuracies in Petitioner's employment records at the time it applied its uniform criteria in rejecting him for rehire.

Given the lack of any evidence that Mack discriminatorily applied its uniform standards in denying Petitioner re-employment, the District Court was manifestly correct in granting summary judgment. Its decision was con-

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[2] It is undisputed that there was no statistically significant difference between the percentages of whites and Hispanics rehired by Mack. The District Court observed that plaintiff did not allege or argue that the policy utilized by Mack to evaluate employees for rehire had a disparate impact on minorities. Petition for Certiorari at 44, n.4.

sistent with that of numerous other courts which have applied the *Burdine* principles to motions for summary judgment. *E.g. Klein v. Trustees of Indiana University*, 766 F.2d 275 (7th Cir. 1985); *Meiri v. Dacon*, 759 F.2d 989 (2nd Cir. 1985), *cert. denied*, 106 S. Ct. 91 (1985).

C. The District Court Correctly Determined That There Was No Contract Giving Petitioner a Right to Rehire.

Petitioner's assertion that the District Court erred in entering summary judgment on his contract claim is equally without foundation. It was undisputed that Petitioner's contractual recall rights had expired. In his deposition, Petitioner testified that when he approached the United Auto Workers to inquire about his rights he was told that the union could not do anything for him because "it was up to the company." Petitioner presented no contrary evidence of any contractual commitment by Mack.

CONCLUSION

For the reasons stated herein, it is respectfully requested that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

ROBERT M. GOLDICH
Three Parkway—20th Floor
Philadelphia, PA 19102
(215) 563-0650

Attorney for Respondent,
Mack Trucks, Inc.